

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:HMT:CIN:1:Postf-127377-02
LRAverbeck

date:

June 11, 2002

to: Richard Gottwald, Manager, Team 1187
Attn: Jeanine Goeglein

from: Area Counsel
(Heavy Manufacturing and Transportation)

subject:

██████████ Inc.
Request for Advice - Form 872

This memorandum responds to your request for assistance dated May 17, 2002. This memorandum should not be cited as precedent.

ISSUE

What entity may execute a Form 872 Consent to Extend the Statute of Limitations for a consolidated corporate return when the parent corporation no longer operates under the name listed on the tax return for the year at issue?

CONCLUSION

The parent corporation, operating under a new name, should execute the Form 872. We suggest the following language be used when listing the taxpayer information on the Form 872:

██████████ Corporation (EIN: ██████████), currently known as ██████████ Inc. (EIN: ██████████), and Subsidiaries.*

Place an asterisk at the bottom of the first page of the Form 872 and insert the following language:

This is with respect to the consolidated return liability of the ██████████ Corporation (EIN: ██████████) consolidated group for the tax year ended ██████████.

FACTS

The tax returns of ██████████ Corporation for the year ending ██████████ are under examination. ██████████ Corporation was the common parent of the consolidated group for

that year. Effective [REDACTED] Corporation changed its name to [REDACTED] Inc., but continued to operate under the same EIN. Effective [REDACTED] [REDACTED] changed its name to [REDACTED] Inc., but still operates under the original EIN.

ANALYSIS

Generally, the name of the taxpayer shown on the return can be used on the consent. Refer to I.R.M. 121.2.22.6.2. In this case, the taxpayer has changed its name, first to [REDACTED] and then to [REDACTED] Inc. The taxpayer continues to operate under the original EIN of [REDACTED] Corp. Neither of these name changes were the result of a merger or reorganization. Although it no longer operates under the name [REDACTED] Corporation, as shown on the return, the taxpayer is still the common parent of the consolidated return group. The common parent of a consolidated group is generally considered the group's agent for all matters relating to the consolidated tax liability. Treas. Reg. § 1.1502-77(a). See also, FSA 200132001 (June 9, 2001). Any waiver given by the common parent is generally considered as having been given by each subsidiary in the consolidated group. Since all of the subsidiaries on the [REDACTED] return are still members of the consolidated group, the following language should be used for the taxpayer's name on the consent form:

[REDACTED] Corporation (EIN: [REDACTED]), currently known as [REDACTED] Inc. (EIN: [REDACTED]), and Subsidiaries.*

Place an asterisk at the bottom of the first page of the Form 872 and insert the following language:

This is with respect to the consolidated return liability of the [REDACTED] Corporation (EIN: [REDACTED]) consolidated group for the tax year ended [REDACTED].

Please ensure that the name of the corporation on the consent is the same as the name reflected on the corporate charter, including all articles and punctuation. In addition, some documentary evidence of the legal name change, such as a copy of the corporate minutes, should be attached to the original consent.

Internal Revenue Code § 6501(a) provides that, as a general rule, tax must be assessed within three years of the filing date of the return. Under section 6501(c)(4), a taxpayer and the Service may consent in writing to an extension of the time for making an assessment. Section 6061 provides that any return,

statement, or document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under section 6501(c)(4) do not specify who may sign consents executed under that section. Accordingly, the Service generally applies the rules regarding the execution of the original returns to Forms 872.

Section 6062 of the Internal Revenue Code provides that, generally, a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return. See Rev. Rul. 83-41, 1983-1 C.B. 349. The title of the signing officer should also be shown in the consent.

Please note that Section 6501(c)(4)(B) requires the IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitation period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872, or provide some other written form of the Section 6501 requirement (such as with a Letter 907).

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although Section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

This advice is subject to post-issuance review by the National Office. Therefore, we request that you wait ten days from the date of receipt of this advice before acting on it.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

RICHARD E. TROGOLO
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
LINDA R. AVERBECK
Attorney (LMSB)